



House of Representatives

File No. 1005

General Assembly

January Session, 2009

(Reprint of File No. 318)

Substitute House Bill No. 6444
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 28, 2009

AN ACT CONCERNING AUTOMOBILE INSURANCE AND THE USE OF CREDIT HISTORY FOR PERSONAL RISK INSURANCE.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 38a-686 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2010*):

3 The following standards, methods and criteria shall apply to the
4 making and use of rates pertaining to personal risk insurance:

5 (a) Rates shall not be excessive, inadequate or unfairly
6 discriminatory.

7 (1) A rate in a competitive market is not excessive. A rate in a
8 noncompetitive market including a rate for insurance provided
9 pursuant to sections 38a-328, 38a-329 and 38a-670 is excessive if it is
10 unreasonably high for the insurance provided.

11 (2) No rate shall be held inadequate unless (A) it is unreasonably
12 low for the insurance provided, and (B) continued use of it would
13 endanger solvency of the insurer, or unless (C) such rate is

14 unreasonably low for the insurance provided and the use of such rate
15 by the insurer using same has, or, if continued will have, the effect of
16 destroying competition or creating a monopoly.

17 (b) In determining whether rates comply with the excessiveness
18 standard in a noncompetitive market under subdivision (1) of
19 subsection (a) of this section, the inadequacy standard under
20 subdivision (2) of subsection (a) of this section and the requirement
21 that rates not be unfairly discriminatory, the following criteria shall
22 apply:

23 (1) Consideration may be given, to the extent possible, to past and
24 prospective loss experience within and outside this state, to
25 conflagration and catastrophe hazards, to a reasonable margin for
26 underwriting profit and contingencies, to past and prospective
27 expenses both country-wide and those specially applicable to this
28 state, to investment income earned or realized by insurers both from
29 their unearned premium and loss reserve funds, and to all other
30 factors, including judgment factors, deemed relevant within and
31 outside this state and in the case of fire insurance rates, consideration
32 may be given to the experience of the fire insurance business during
33 the most recent five-year period for which such experience is available.
34 Consideration may be given in the making and use of rates to
35 dividends, savings or unabsorbed premium deposits allowed or
36 returned by insurers to their policyholders, members or subscribers.

37 (2) (A) The systems of expense provisions included in the rates for
38 use by an insurer or group of insurers may differ from those of other
39 insurers or groups of insurers to reflect the operating methods of any
40 such insurer or group with respect to any kind of insurance, or with
41 respect to any subdivision or combination thereof.

42 (B) (i) With respect to private passenger nonfleet automobile
43 insurance, an insurer shall not allocate as flat dollar amounts to base
44 rates: (I) Producer commissions; (II) premium taxes; (III) underwriting
45 profits; or (IV) contingencies.

46 (ii) With respect to private passenger nonfleet automobile insurance,
47 an insurer shall allocate as flat dollar amounts to base rates: (I) At least
48 ninety per cent of general expenses, including administration and
49 overhead costs; (II) at least ninety per cent of other acquisition costs for
50 marketing and agent field offices, which may be allocated over the
51 expected life of such insurer's policies; and (III) miscellaneous taxes,
52 licenses and fees.

53 (iii) Each insurer shall allocate such flat dollar amounts set forth in
54 subparagraph (B)(ii) of this subdivision after any classification factors
55 set forth in subdivisions (3) to (5), inclusive, of this subsection have
56 been applied to base rates.

57 (3) Risks may be grouped by classifications for the establishment of
58 rates and minimum premiums, provided that with respect to private
59 passenger nonfleet automobile insurance, any change in territorial
60 classifications shall be subject to prior approval by the Insurance
61 Commissioner, and provided no surcharge on any motor vehicle
62 liability or physical damage insurance premium [may] shall be
63 assigned for (A) any accident involving only property damage of one
64 thousand dollars or less, [or] (B) the first accident involving only
65 property damage of more than one thousand dollars which would
66 otherwise result in a surcharge to the policy of the insured, within the
67 experience period set forth in the insurer's safe driver classification
68 plan, [or] (C) any violation of section 14-219 unless such violation
69 results in the suspension or revocation of the operator's license under
70 section 14-111b, [or] (D) less than three violations of section 14-218a
71 within any one-year period, [or] (E) any accident caused by an
72 operator other than the named insured, a relative residing in the
73 named insured's household, or a person who customarily operates the
74 insured vehicle, [or] (F) the first or second accident within the current
75 experience period in relation to which the insured was not convicted of
76 a moving traffic violation and was not at fault, or (G) any motor
77 vehicle infraction. Subparagraph (G) of this subdivision shall not be
78 applicable to any plan established pursuant to section 38a-329.
79 Classification rates may be modified to produce rates for individual

80 risks in accordance with rating plans [which] that provide for
81 recognition of variations in hazards or expense provisions or both.
82 Such rating plans may include application of the judgment of the
83 insurer and may measure any differences among risks that can be
84 demonstrated to have a probable effect upon losses or expenses.

85 (4) Each rating plan for private passenger nonfleet automobile
86 insurance that includes territorial classifications shall assign a weight
87 of seventy-five per cent to individual territorial loss cost indication and
88 twenty-five per cent to the state-wide average loss cost indication.

89 ~~[(4)]~~ (5) Each rating plan shall establish appropriate eligibility
90 criteria for determining significant risks [which] that are to qualify
91 under the plan. Rating plans [which] that comply with the provisions
92 of this subdivision shall be deemed to produce rates [which] that are
93 not unfairly discriminatory.

94 (c) Notwithstanding the provisions of subsections (a) and (b) of this
95 section, no rate shall include any adjustment designed to recover
96 underwriting or operating losses incurred out-of-state.

97 (d) ~~[The]~~ Not later than January 1, 2011, the commissioner [may]
98 shall adopt regulations, in accordance with the provisions of chapter
99 54, [concerning rating plans to effectuate] to implement the provisions
100 of this section and the most current guidelines and bulletins issued by
101 the Insurance Department and in effect that pertain to territorial
102 classifications.

103 Sec. 2. Subsection (b) of section 38a-686 of the general statutes, as
104 amended by section 1 of this act, is amended by adding subdivision (6)
105 as follows (*Effective July 1, 2010*):

106 (NEW) (6) With respect to personal risk insurance, an insurer shall
107 not use an applicant's or insured's credit history as a factor in
108 underwriting or rating except in accordance with this subdivision. For
109 the purposes of this section, "credit history" means any credit-related
110 information derived from or found in a credit report or credit scoring

111 program or provided in an application for personal risk insurance, and
112 "financial history measurement program" means a program that uses
113 an applicant's credit history to measure such applicant's risk of loss.

114 (A) An insurer shall file with the commissioner any financial history
115 measurement program it uses to underwrite or rate risks for personal
116 risk insurance. Such filing shall (i) include a description of the
117 program, (ii) identify the characteristics used in such program from
118 which a measurement is derived, (iii) include the rules and procedures
119 of such program, and (iv) include an explanation of the impact of
120 credit information and items of public record on insurance rates over
121 time. Such program shall not unfairly discriminate among applicants
122 or produce rates that are excessive for the risk assumed. Any filing
123 made pursuant to this subparagraph shall be considered a trade secret
124 for the purposes of section 1-210.

125 (B) (i) An insurer that uses a financial history measurement program
126 shall submit to the commissioner documentation that demonstrates the
127 correlation between such program and the expected risk of loss, and
128 how such program impacts consumers (I) in urban territories, versus
129 consumers in nonurban territories, and (II) based on consumers' ages.
130 The commissioner may request the insurer to provide a financial
131 history measurement for a set of test examples that reflect various
132 characteristics.

133 (ii) An insurer that uses a financial history measurement program
134 shall disclose to each applicant for personal risk insurance, in writing,
135 by telephone, by electronic mail or orally, at the time of application
136 that the applicant's credit history may be used in the underwriting or
137 rating of such applicant's policy, and that the applicant has the right to
138 request, in writing, that the insurer consider, during its underwriting
139 or rating process or during a review requested by such applicant of a
140 rate quote, an extraordinary life circumstance, as set forth in
141 subparagraph (D) of this subdivision, if such applicant's credit history
142 has been adversely impacted by such extraordinary life circumstance
143 and such extraordinary life circumstance occurred within three years

144 before the date of the application. In addition, such insurer shall
145 provide to each purchaser of such policy, not later than the date of
146 issuance of such policy, a written disclosure that includes: (I) The
147 name, address, telephone number and toll-free telephone number, if
148 applicable, of the insurer; (II) detailed information about how the
149 insurer uses credit information to underwrite or rate such policies; and
150 (III) a summary of consumer protections regarding the use of credit, in
151 a form determined by the commissioner. Such written disclosure shall
152 be printed in reasonably conspicuous type and be provided by the
153 insurer electronically, by mail or by hand delivery.

154 (C) (i) An insurer may use a financial history measurement program
155 to underwrite or rate risks only (I) for new personal risk insurance
156 policies, or (II) upon renewal, either at the request of an insured or if
157 such use reduces the premium for the insured in accordance with the
158 insurer's filed rates and rules.

159 (ii) An insurer shall not use the following characteristics in a
160 financial history measurement program: (I) The number of credit
161 inquiries in an applicant's or insured's credit report or credit history;
162 (II) the applicant's or insured's use of a particular type of credit card,
163 debit card or charge card; (III) the applicant's or insured's total
164 available line of credit; (IV) any disputed credit information while such
165 dispute is under review by a credit reporting company, provided such
166 information is identified in an applicant's or insured's credit report or
167 credit history as being in dispute; (V) collection accounts identified
168 with a medical industry code in the applicant's or insured's credit
169 report or credit history; and (VI) the applicant's or insured's lack of
170 credit history, unless the insurer treats the applicant or insured as if
171 such applicant or insured had neutral credit information, as defined by
172 the insurer.

173 (iii) A financial history measurement program shall give the same
174 weight to an applicant's or insured's purchase or financing of a specific
175 item regardless of the type of item purchased or financed.

176 (D) (i) Upon written request by an applicant, an insurer shall
177 consider, during its underwriting or rating process or during a review
178 requested by such applicant of a rate quote, an extraordinary life
179 circumstance of such applicant if such extraordinary life circumstance
180 occurred within three years before the date of application. If such
181 insurer determines that such applicant's credit history has been
182 adversely impacted by such extraordinary life circumstance, such
183 insurer shall grant a reasonable exception to such insurer's rates, rating
184 classifications or underwriting rules for such applicant. As used in this
185 subparagraph, "extraordinary life circumstance" means (I) a
186 catastrophic illness or injury, (II) divorce, (III) the death of a spouse,
187 child or parent, (IV) the involuntary loss of employment for more than
188 three consecutive months, (V) identity theft, (VI) total or other loss that
189 makes a home uninhabitable, (VII) other circumstances as adopted in
190 regulations by the commissioner, in accordance with chapter 54, or
191 (VIII) any other circumstance an insurer may choose to recognize.

192 (ii) An insurer may require the applicant to provide reasonable,
193 independently verifiable written documentation of the extraordinary
194 life circumstance and the effect of such extraordinary life circumstance
195 on such applicant's credit report or credit history. Any such
196 documentation shall be kept confidential by the insurer.

197 (iii) If the insurer grants an exception pursuant to subparagraph
198 (D)(i), the insurer shall (I) consider only credit information that is not
199 affected by the extraordinary life circumstance, or (II) treat the
200 applicant as if such applicant had neutral or better than neutral credit
201 information, as defined by the insurer.

202 (iv) An insurer shall not be deemed to be out of compliance with
203 any provision of the general statutes or regulations adopted
204 thereunder concerning underwriting, rating or rate filing solely on the
205 basis of the granting of an exception pursuant to this subparagraph.

206 (E) (i) If an insurer takes an adverse action that is due at least in part
207 to the information contained in an applicant's or insured's credit

208 report, such insurer shall disclose to such applicant or insured: (I) That
209 such adverse action was based on the credit report of such insured or
210 applicant; (II) that such applicant or insured is entitled to a free copy of
211 such credit report and where such report can be obtained; (III) the
212 types of extraordinary life circumstances set forth in subparagraph (D)
213 of this subdivision; and (IV) the procedures for an applicant to inform
214 the insurer of an extraordinary life circumstance and to submit any
215 required documentation pursuant to subparagraph (D) of this
216 subdivision.

217 (ii) For the purposes of this subdivision, an "adverse action" means
218 (I) the denial of coverage to an applicant or insured or the offering of
219 restricted coverage, (II) the offering of a higher rate, (III) the
220 assignment of an applicant or insured to a higher rate tier or to a
221 higher-priced company within an insurer group, or (IV) any other
222 action that adversely impacts an applicant or insured due to the
223 financial history measurement program.

224 (F) After an insurer's financial history measurement program has
225 been in effect for two years, the commissioner may require such
226 insurer to submit a report to the commissioner on the use of such
227 program in the state. Such report shall include information that
228 demonstrates that such program results in rates that are supported by
229 the data and that are not unfairly discriminatory, and an analysis of
230 consumer complaints submitted in writing or by electronic mail to the
231 insurer resulting from such insurer's use of a financial history
232 measurement program, such that is sufficient to identify the basis for
233 the complaints and any subsequent insurer action.

234 Sec. 3. (NEW) (*Effective January 1, 2010*) The declination, cancellation
235 or nonrenewal of a personal risk insurance policy not subject to the
236 provisions of section 38a-358 of the general statutes, as amended by
237 this act, is prohibited if the declination, cancellation or nonrenewal is
238 based solely on information contained in an insured's or applicant's
239 credit history or credit rating or solely on an applicant's lack of credit
240 history. For the purposes of this section, an insurer shall not be

241 deemed to have declined, cancelled or nonrenewed a policy if
242 coverage is available through an affiliated insurer.

243 Sec. 4. Section 38a-358 of the general statutes is repealed and the
244 following is substituted in lieu thereof (*Effective January 1, 2010*):

245 The declination, cancellation or nonrenewal of a policy for private
246 passenger nonfleet automobile insurance is prohibited if the
247 declination, cancellation or nonrenewal is based: (1) On the race,
248 religion, nationality or ethnicity of the applicant or named insured; (2)
249 solely on the lawful occupation or profession of the applicant or
250 named insured, except that this provision shall not apply to any
251 insurer which limits its market to one lawful occupation or profession
252 or to several related lawful occupations or professions; (3) on the
253 principal location of the insured motor vehicle unless such decision is
254 for a business purpose which is not a mere pretext for unfair
255 discrimination; (4) solely on the age, sex or marital status of an
256 applicant or an insured, except that this subdivision shall not apply to
257 an insurer in an insurer group if one or more other insurers in the
258 group would not decline an application for essentially similar coverage
259 based upon such reasons; (5) on the fact that the applicant or named
260 insured previously obtained insurance coverage through a residual
261 market; (6) on the fact that another insurer previously declined to
262 insure the applicant or terminated an existing policy in which the
263 applicant was the named insured; [or] (7) the first or second accident
264 within the current experience period in relation to which the applicant
265 or insured was not convicted of a moving traffic violation and was not
266 at fault; or (8) solely on information contained in an insured's or
267 applicant's credit history or credit rating or solely on an applicant's
268 lack of credit history. For the purposes of subdivision (8) of this
269 section, an insurer shall not be deemed to have declined, cancelled or
270 nonrenewed a policy if coverage is available through an affiliated
271 insurer.

272 Sec. 5. Section 38a-343 of the general statutes is repealed and the
273 following is substituted in lieu thereof (*Effective October 1, 2009*):

274 (a) No notice of cancellation of a policy to which section 38a-342
275 applies [may] shall be effective unless sent, by registered or certified
276 mail or by mail evidenced by a certificate of mailing, or delivered by
277 the insurer to the named insured, and any third party designated
278 pursuant to section 38a-323a, at least forty-five days before the
279 effective date of cancellation, except that (1) where cancellation is for
280 nonpayment of the first premium on a new policy, at least fifteen days'
281 notice of cancellation accompanied by the reason for cancellation shall
282 be given, and (2) where cancellation is for nonpayment of any other
283 premium, at least ten days' notice of cancellation accompanied by the
284 reason for cancellation shall be given. No notice of cancellation of a
285 policy which has been in effect for less than sixty days [may] shall be
286 effective unless mailed or delivered by the insurer to the insured and
287 any third party designee at least forty-five days before the effective
288 date of cancellation, [provided] except that (A) at least fifteen days'
289 notice shall be given where cancellation is for nonpayment of the first
290 premium on a new policy, and (B) at least ten days' notice shall be
291 given where cancellation is for nonpayment of any other premium or
292 material misrepresentation. The notice of cancellation shall state or be
293 accompanied by a statement specifying the reason for such
294 cancellation. Any notice of cancellation for nonpayment of the first
295 premium on a new policy may be retroactive to the effective date of
296 such policy, provided at least fifteen days' notice has been given to the
297 insured and any third party designee and payment of such premium
298 has not been received during such notice period.

299 (b) Where a private passenger motor vehicle liability insurance
300 company sends a notice of cancellation under subsection (a) of this
301 section to the named insured of a private passenger motor vehicle
302 liability insurance policy, or a third party designee, such company
303 shall provide with such notice a warning, in a form approved by the
304 Commissioner of Motor Vehicles and the Insurance Commissioner,
305 which informs the named insured that (1) the cancellation will be
306 reported to the Commissioner of Motor Vehicles; (2) the named
307 insured may be receiving one or more mail inquiries from the

308 Commissioner of Motor Vehicles, concerning whether or not required
309 insurance coverage is being maintained, and that the named insured
310 must respond to these inquiries; (3) if the required insurance coverage
311 lapses at any time, the Commissioner of Motor Vehicles may suspend
312 the registration or registrations for the vehicle or vehicles under the
313 policy and the number plates will be subject to confiscation and any
314 person operating any such vehicle will be subject to legal penalties for
315 operating a motor vehicle with a suspended registration; (4) the named
316 insured will not be able to have the registration restored or obtain a
317 new registration, or any other registration or renewal in the insured's
318 name, except upon presentation to the Commissioner of Motor
319 Vehicles of evidence of required security or coverage and the entering
320 into of a consent agreement with the commissioner in accordance with
321 the provisions of section 14-12g.

322 (c) If a passenger motor vehicle liability insurance company cancels
323 a private passenger motor vehicle liability insurance policy pursuant to
324 section 38a-342, such company shall send a written notice of such
325 cancellation to any lienholder shown on the records of such company
326 as having a legal interest in such motor vehicle.

327 [(c)] (d) This section shall not apply to nonrenewal or if the private
328 passenger motor vehicle liability insurance policy is transferred from
329 an insurer to an affiliate of such insurer for another policy with no
330 interruption of coverage and contains the same terms, conditions and
331 provisions, including policy limits, as the transferred policy, except
332 that the insurer to which the policy is transferred shall not be
333 prohibited from applying its rates and rating plans at the time of
334 renewal.

335 Sec. 6. Section 14-12h of the general statutes is repealed and the
336 following is substituted in lieu thereof (*Effective October 1, 2009*):

337 (a) The Commissioner of Motor Vehicles shall compile and maintain
338 a record of all registrations suspended in accordance with the
339 provisions of sections 14-12c and 14-12g. The commissioner shall

340 update the information contained in such record not less than once per
341 week and shall make available to all law enforcement agencies in this
342 state a list of all registration number plates for vehicles whose
343 registration has been suspended. Such list shall contain the number
344 plate numbers, letters or number and letter combinations and the
345 address at which the vehicle was registered. The commissioner may
346 make available the entire list or a portion thereof and may utilize one
347 or more formats for presenting the information contained therein to
348 facilitate its use.

349 (b) (1) If any police officer observes a motor vehicle being operated
350 upon the public highway, and such motor vehicle is displaying
351 registration number plates identified as suspended on the list made
352 available by the commissioner, such police officer may (A) stop or
353 detain such vehicle and its occupants, (B) issue to the operator a
354 complaint for operating an unregistered motor vehicle, or expired
355 registration if the vehicle is not being operated, in violation of section
356 14-12, and (C) remove the registration number plates from the vehicle
357 and return them to any branch office of the Department of Motor
358 Vehicles. If any police officer, motor vehicle inspector or constable
359 observes a motor vehicle parked in any parking area, as defined in
360 section 14-212, and such motor vehicle is displaying registration
361 number plates identified as suspended on the list made available by
362 the commissioner, such police officer, motor vehicle inspector or
363 constable is authorized to remove the registration number plates from
364 the vehicle and to return them to any branch office of the Department
365 of Motor Vehicles. If a number plate is identified as suspended on the
366 list provided by the commissioner and such identification is in error,
367 the state shall indemnify any police officer, motor vehicle inspector or
368 constable for any claim for damages made against that individual as a
369 result of such individual's good faith reliance on the accuracy of the list
370 provided by the commissioner regarding the confiscation of number
371 plates.

372 (2) If any police officer observes a motor vehicle being operated
373 upon the public highway or parked in any parking area, as defined in

374 section 14-212, displaying registration number plates identified on the
375 list made available by the commissioner as being suspended, such
376 police officer may seize and impound the vehicle. If a police officer
377 seizes and impounds a vehicle pursuant to this subdivision, such
378 officer shall give notice to the commissioner in such form as the
379 commissioner may require. The police officer shall give such notice not
380 later than three days after seizing and impounding the vehicle.

381 (c) Any motor vehicle [which] that has been impounded in
382 accordance with the provisions of subdivision (2) of subsection (b) of
383 this section shall not be released to the owner or person otherwise
384 entitled to possession of the vehicle unless such owner or person
385 presents a valid registration and a current automobile insurance
386 identification card. Any such impounded motor vehicle that is not
387 reclaimed by the owner of such motor vehicle within forty-five days
388 after impounding [,] shall be subject to forfeiture to the state.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2010</i>	38a-686
Sec. 2	<i>July 1, 2010</i>	38a-686(b)
Sec. 3	<i>January 1, 2010</i>	New section
Sec. 4	<i>January 1, 2010</i>	38a-358
Sec. 5	<i>October 1, 2009</i>	38a-343
Sec. 6	<i>October 1, 2009</i>	14-12h

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill as amended makes changes to automobile insurance laws and does not result in a fiscal impact.

House "A" strikes the underlying bill and replaces it with language that staggers implementation dates, so that the Department of Insurance (DOI) can accommodate associated workload increases within normally existing resources. Effective dates for the provisions are: 1/1/10 for private passenger nonfleet automobile insurance rates; 7/1/10 for the submittal of "extraordinary life circumstances" guidelines related to financial history measurement programs; and 1/1/11 for the establishment of related DOI regulations.

The effective dates for the rate and guideline components provide DOI time to notify insurance carriers to submit, in both rate and guideline filings, only those changes required. It is anticipated that this notification would result in less complex filings received, allowing DOI to accommodate them within normally existing resources. Regulations can be created by the agency by existing staff by the effective date.

The Out Years

None

OLR Bill Analysis**sHB 6444 (as amended by House "A")******AN ACT CONCERNING AUTOMOBILE INSURANCE.*****SUMMARY:**

This bill makes changes in the insurance laws relating to an insurer's rating plans for personal risk insurance policies e.g., homeowner's, tenant's, and private passenger non-fleet automobile (auto) policies. It incorporates into law, and adds to, the Insurance Department's current guidelines for how insurers can use a person's credit history when underwriting or rating a policy. It specifies what may and may not be added to an auto policy's base rate on a flat dollar basis.

Current law allows the commission to adopt regulation concerning rating plans. The bill instead requires the commissioner to adopt regulations, by January 1, 2011, to implement statutory provisions regarding rate-setting standards, methods, and criteria. The regulations must include the department's "most current guidelines and bulletins" regarding the underwriting, classification, or rating of auto insurance risks in Connecticut, including those regarding territorial rating (see BACKGROUND). It requires each rating plan for auto insurance that includes territorial classifications to assign a weight of 75% to individual territorial loss-cost indication and 25% to the state-wide average loss-cost indication.

The bill requires an insurer that cancels an auto insurance policy in accordance with law to give written cancellation notice to any lienholder listed in the insurer's records as having a legal interest in the motor vehicle.

It requires a person whose vehicle has been impounded for not having the required registration or insurance to present a valid registration and current auto insurance identification card in order to regain possession of the vehicle.

It also makes technical and conforming changes.

*House Amendment "A" (1) applies the bill's provisions regarding financial history programs to all personal risk policies rather than just auto policies; (2) modifies several provisions regarding these programs, including disclosure requirements and prohibited practices; (3) adds the provision on territorial classifications; (4) delays the effective date of several provisions; and (5) makes minor changes.

EFFECTIVE DATE: October 1, 2009 for the provisions on impounded vehicles notice to lienholders of auto policy cancellations, January 1, 2010, for the allocation of auto insurance costs and actions tied to an insured or applicant's credit history or report, and July 1, 2010 for the financial history measurement program provisions.

FINANCIAL HISTORY MEASUREMENT PROGRAM (SECS. 2-4)

The bill permits an insurer to use a "financial history measurement program" only when underwriting or developing rates for new personal risk insurance policies. It prohibits an insurer from using credit history when renewing a policy, unless the policyholder asks or using the program reduces the insured's premium under the insurer's filed rates and rules.

Definitions

The bill defines "financial history measurement program" as a program that uses an insurance applicant's credit history to measure his or her risk of loss (i.e., filing claims). It defines "credit history" as credit-related information (1) derived from or found in a credit report or credit scoring program or (2) provided in an application for personal risk insurance.

Program Filing Requirements

The bill requires an insurer using a financial history measurement program to underwrite or rate policies to file the program with the insurance commissioner. The filing must:

1. include the program's description, rules, and procedures;
2. identify the characteristics the program uses from which the insurer derives a measurement; and
3. explain how the program reduces the impact credit information and public records have on insurance rates over time.

The bill prohibits the program from (1) unfairly discriminating among applicants or (2) producing rates that are excessive for the risk assumed. This filing is considered a trade secret, and thus not subject to disclosure under the Freedom of Information Act.

The bill requires an insurer using a financial history measurement program to also give the commissioner documentation demonstrating (1) the correlation between the program and the expected risk of loss and (2) how the program affects consumers (a) in urban versus nonurban territories and (b) of different ages. The bill authorizes the commissioner to request an insurer to provide a financial history measurement for a set of test examples reflecting various characteristics.

Disclosure to Insurance Applicant

When anyone applies for a policy the bill requires an insurer to disclose to the person that the company may use his or her credit history in the underwriting or rating process. The insurer must also disclose, at the same time, that the applicant may request, in writing, that the insurer consider an extraordinary life circumstance during this process or during a review requested by such applicant of a rate quote, if the applicant's credit history has been harmed by a such a circumstance that occurred within three years before the application. The insurer must make these disclosures, in writing, by e-mail or telephone, or orally.

The insurer also must give each policy purchaser a written disclosure that:

1. lists the insurer's name, address, telephone number, and toll-free telephone number, if any;
2. includes a detailed statement that explains how the insurer will use credit information to underwrite or rate the policy; and
3. summarizes consumer protections provided in law.

The disclosure must be printed in reasonably conspicuous type and be provided electronically, by mail, or hand delivery.

Prohibited Practices

The bill prohibits insurers from using the following characteristics regarding an applicant or an insured in its financial history measurement program:

1. the number of credit inquiries in a credit report or credit history;
2. the use of a particular type of credit, debit, or charge card;
3. the total available line of credit;
4. any disputed credit information while a credit reporting company is reviewing the dispute, so long as the information is identified as being disputed in the report or history;
5. debt the applicant incurred from financing hospital or medical expenses; and
6. the lack of credit history, unless the insurer treat the applicant or insured as if he or she had neutral credit information as defined by the insurer.

A financial history measurement program must give the same weight to an applicant's or insured's purchase or financing of a specific item regardless of the type of item purchased or financed.

Extraordinary Life Circumstances. The bill requires an insurer to consider during its underwriting or rating process or during a review requested by an applicant, an applicant's extraordinary life circumstance. The insurer must do this at an applicant's written request if a circumstance occurred within three years before the application date. If the insurer determines that the applicant's credit history has been adversely impacted by an extraordinary life circumstance, it must grant a reasonable exception to its rates, rating classifications, or underwriting rules for the applicant.

The bill defines an "extraordinary life circumstance" as:

1. a catastrophic illness or injury;
2. a divorce;
3. a spouse's, child's, or parent's death;
4. the involuntary loss of employment for more than three consecutive months;
5. identity theft;
6. total or other loss that makes a home uninhabitable;
7. other circumstances the commissioner identifies in regulations adopted in accordance with law; or
8. any other circumstance the insurer chooses to recognize.

The bill permits an insurer to require the applicant to provide reasonable, independently verifiable documentation of the extraordinary circumstance and its effect on the applicant's credit report or credit history. It requires an insurer to keep confidential any documentation or information it obtains.

If the insurer grants an exception, it must (1) consider only credit information that is not affected by the extraordinary circumstance, or

(2) treat the applicant as if he or she had neutral or better than neutral credit information, as defined by the insurer.

An insurer may not be deemed to be out of compliance with any provision of the statutes or regulations concerning underwriting, rating, or rate filing solely on the basis of the granting of an exception.

Adverse Actions Due to Credit History

The bill prohibits an insurer from denying, cancelling, or not renewing an insurance policy solely on the basis of a person's (1) credit history or rating or (2) lack of credit history. The bill specifies that it does not deem an insurer to have declined, cancelled, or not renewed a policy if coverage is available to the person through an affiliated insurer.

The bill requires an insurer that takes an adverse action due in part to an insured's or applicant's credit report to (1) disclose this to the person, (2) tell him or her of the right to obtain a free credit report, and how to do so, (3) the types of extraordinary life circumstances described above; and (4) how an applicant may inform the insurer of an extraordinary life circumstance and submit any required documentation in order to seek an exception.

Under the bill, an "adverse action" includes:

1. denying coverage or offering restricted coverage,
2. offering a higher rate,
3. assigning a person to a higher rate tier or higher-priced company within an insurer group, or
4. any other action that adversely impacts an insured or applicant due to the insurer's financial history measurement program.

Report to Commissioner

The bill allows the commissioner to require an insurer, once its financial history measurement program has been in effect for two

years, to report to him. The report must include information demonstrating that the program results in rates that are (1) supported by the data and (2) not unfairly discriminatory. It must also include an analysis of consumer complaints the insurer received because it used a financial history measurement program. The analysis must identify the basis for the complaints and any action the insurer took as a result.

ALLOCATING EXPENSES ON FLAT DOLLAR BASIS

The bill specifies what expenses an auto insurer can and cannot allocate to a policy's base rate on a "flat dollar" basis.

It prohibits insurers from allocating as flat dollar amounts to the base rate (1) producer commissions, (2) premium taxes, (3) underwriting profits, or (4) contingencies.

It requires an insurer to add a flat dollar amount to the base rate for (1) at least 90% of general expenses, including administration and overhead costs; (2) at least 90% of acquisition costs for other marketing and agent field offices, which may be allocated over the expected life of the insurer's policies; and (3) miscellaneous taxes, licenses, and fees. It requires that the flat dollar amount be added after the insurer has applied any classification factors to the base rate.

By law, an insurer may group risks by classifications and modify base rates for a person's individual characteristics as described in the rating plan it files with the commissioner.

BACKGROUND

Auto Insurance Policy Cancellation

By law, an auto insurance policy cancellation is effective only if it is due to (1) failure to pay premiums or (2) a revocation of the driver's license or registration of either (a) the named insured or (b) any operator living in the same household or who customarily uses a vehicle the policy insures (CGS § 38a-342). The law does not apply to (1) a policy issued through the residual market or (2) any coverage that has been in effect less than 60 days at the time the insurer mails or

delivers the cancellation notice, unless it relates to a policy (a) being renewed or (b) that a customer is not renewing.

Territorial Rating for Auto Insurance

The law (1) prohibits insurance rates from being excessive, inadequate, or unfairly discriminatory; (2) requires an insurer to file with the commissioner its underwriting rules, rates, supplementary rate information, and any supporting information used for the rates; and (3) requires certain premium discounts under certain conditions (e.g., completing driver training, senior citizen accident prevention, and motorcycle training courses). The law also permits insurers to group risks by classification, measuring differences in risks that can be demonstrated to have a probable effect upon losses or expenses.

The term “territorial rating” refers to an insurer’s practice of factoring in, when setting auto insurance rates, the principle place where a driver garages his or her vehicle. The Insurance Department requires a 75%/25% weighting of territory to statewide experience. This means that the base rate for an auto insurance policy must give 75% weight to the territory’s loss-cost data and 25% weight to the statewide average loss-cost data.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 12 Nay 6 (03/12/2009)